

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 4: Assessment (Investigation)	Effective Date: July 1, 2007
	Section 17: Accessing Child's Medical, Psychological and Substance Abuse Records	Version: 1

POLICY	OLD POLICIES: 205.45; 205.461
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1. **[REVISED]** The Indiana Department of Child Services (DCS) **is not** required to get consent from the **parent/guardian/custodian** or the **child** prior to accessing an alleged child victim's **medical (physical health) records** if the records pertain to an examination or treatment that:
 - a. Occurred as part of a CA/N assessment (investigation); or
 - b. Resulted in a CA/N report by a medical professional.

Note: This policy complies with HIPAA regulations; see Related Information for details.
2. **[REVISED]** DCS **is** required to obtain written consent from the alleged victim's **parent/guardian/custodian** prior to obtaining:
 - a. any **mental health** assessment or treatment records
 - b. any **alcohol use/substance abuse** assessment or treatment records
 - c. any **medical** records for the alleged child victim that do not fit the criteria outlined in Policy Statement 1 above.

Exception: If the alcohol use/substance abuse records pertain to treatment that the child received through his/her own voluntary consent, that child may consent to the release of the records without parent/guardian/custodian consent.
3. DCS will seek a court order if:
 - a. an alleged child victim's parent/guardian/custodian does not give consent; or
 - b. an alleged child victim does not consent to the release of alcohol use/substance abuse records pertaining to treatment that the child received through his/her own voluntary consent; or
 - c. an alleged child victim's counselor asserts the "victim counselor privilege" and denies DCS access to the child's mental health records.

Code References

- [IC 16-39-2 Chapter 2. Release of Mental Health Records to Patient and Authorized Persons](#)
- [IC 35-37-6 Privileged communications and victim counseling](#)
- [IC 31-32-11-1 Admissibility of privileged communications](#)

PROCEDURE

The FCM will:

- **As necessary**, seek required signatures on the form, [Consent to Background Investigation and Release](#) to facilitate the release of **medical (physical health)** records of an alleged child victim.

- Seek required signatures on the form, [Consent to Release of Mental Health and Addiction Records](#) to facilitate the release of **mental health**, **alcohol use** and/or **substance use** records of an alleged child victim.
- Seek a court order as needed if a required consent is denied.

RELATED INFORMATION

HIPAA

45 CFR 164.512(b)(1)(ii) makes exceptions to HIPAA for CPS investigations. "A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to ...A public health authority or other appropriate government authority authorized by law to receive reports of child abuse and neglect."

The Victim Counselor Privilege

Criminal procedures in [IC 35-37-6 Privileged communications and victim counseling](#) establish victim counselor privilege related to "confidential communications" between a victim and a victim counselor. All victim counselors remain bound by the mandated reporting statutes pertaining to (CA/N). Thus, victim counselor privilege cannot be applied to the reporting of suspected CA/N. Anytime a victim counselor has reason to believe a child is a victim of CA/N, the counselor must make a report to DCS. However, after a report has been made, the victim counselor may assert the victim counselor privilege to prevent the disclosure of information and records during the course of the investigation.

Voluntary Consent to Treatment and Release of Related Records by a Minor

[IC 12-23-12-1 Notification or consent of parents or guardians; treatment in absence of notification](#), states that a minor who voluntarily seeks treatment for alcoholism, alcohol abuse, or drug abuse from the FSSA/DMHA or a facility approved by FSSA/DMHA may receive treatment without notification or consent of the parents, guardian, or person having control or custody of the minor. DCS interprets this code, along with [42 USC Sec 290 dd-2](#), to mean that a minor can consent to the release of records that pertain to treatment for which he/she voluntarily consented.

FORMS AND TOOLS

The following forms are available in ICWIS and the [Juvenile Justice Benchbook: Child In Need of Services](#):

- Consent to Release of Mental Health and Addiction Records (SF 51128)
- Consent to Background Investigation and Release